

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES GINZKEY, RICHARD FITZGERALD, CHARLES CERF, BARRY DONNER, and on behalf of the class members described below.

Case No. C18-1773RSM

ORDER GRANTING UNOPPOSED
MOTION FOR ATTORNEYS' FEES,
EXPENSES, AND SERVICE AWARDS

Plaintiffs,

V.

NATIONAL SECURITIES CORPORATION,
a Washington Corporation,

Defendant.

This matter comes before the Court on Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses, and Service Awards, Dkt. #127. The Court heard oral argument on this Motion at the November 3, 2022, Fairness Hearing. For the reasons stated below, the Court **GRANTS** this Motion.

Plaintiffs seek a total of 40% of the cash fund in attorneys' fees (\$1,860,000), \$86,612.69 in expenses, and \$10,000 for each of the four class representatives, all to come out of the cash fund awarded in this case. Plaintiffs request that American Legal Claim Services fees for settlement notice and distribution be paid from the cash proceeds in the amount of \$13,370.41.

Federal Rule of Civil Procedure 23(h) provides that “[i]n a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Because Washington law governs the claims in this case, it also

1 governs the award of fees. *Vizcaino v. Microsoft*, 290 F.3d 1043, 1047 (9th Cir. 2002). Under
2 Washington law, the percentage-of-recovery approach is generally used to calculate fees in
3 common fund cases. *Bowles v. Dep't of Ret. Sys.*, 121 Wn.2d 52, 72 (1993).

4 The Ninth Circuit typically weighs five factors in determining what constitutes a
5 reasonable award under the percentage-of-recovery method: (1) the results achieved; (2) the
6 risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the
7 fee and the financial burden; and (5) awards made in similar cases. *See Vizcaino* at 1048-50.

9 The Court agrees with Plaintiffs that, considering these factors, the record, and the
10 arguments at the fairness hearing, the requested fee award of forty percent of the Settlement
11 Fund is reasonable. This was a hard-fought case with no guarantee of success. The result is a
12 good one for these investors considering the outcomes of similar cases. Plaintiffs' attorneys
13 took this case on a contingent basis and fronted the expenses. The Court is also persuaded by
14 the lack of objections from the class, which consists of relatively sophisticated investors.

16 Having considered the briefing from the parties and the remainder of the record, the
17 Court hereby finds and ORDERS that Plaintiffs' Unopposed Motion for Attorneys' Fees,
18 Expenses, and Service Awards, Dkt. #127, is GRANTED. Plaintiffs' counsel are to be paid
19 40% of the cash fund in attorneys' fees (\$1,860,000), \$86,612.69 in expenses, and are to
20 provide \$10,000 for each of the four class representatives, all to come out of the cash fund
21 awarded in this case.

23 DATED this 3rd day of November 2022.

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28 Barbara Jacobs Rothstein
U.S. District Court Judge